

## **FACTSHEET**

**TITLE:** **WAIVER NO. 05006**, requested by Kenneth Bundy, to waive the requirement to install sidewalks associated with the Osie Square final plat, on property generally located at North 64<sup>th</sup> Street and Cotner Boulevard.

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 06/22/05  
Administrative Action: 06/22/05

**STAFF RECOMMENDATION:** **Denial**

**RECOMMENDATION:** **Denial** (8-1: Carlson, Sunderman, Marvin, Pearson, Carroll, Krieser, Taylor and Bills-Strand voting 'yes'; Larson voting 'no').

### **FINDINGS OF FACT:**

1. This is a request to waive the installation of the sidewalk on North 64<sup>th</sup> Street associated with the Osie Square final plat.
2. The staff recommendation to **deny** the waiver is based upon the "Analysis" as set forth on p.3, concluding that there are no unusual circumstances that would prevent the installation of the sidewalk. The installation of this sidewalk would fill the gap in the sidewalk between Dudley Street and Orchard Street.
3. The applicant's testimony is found on p.5, alleging that there is no need for the sidewalk; there have never been sidewalks at this location; and there are very few children in the area. The applicant suggested that the sidewalk would be installed when the owner, Kenneth Bundy, is no longer able to live at 1220 N. 64<sup>th</sup> Street and the property is sold to the adjacent existing dental office.
4. The record consists of one letter in support (p.15).
5. There was no testimony in opposition; however, the record consists of one letter in opposition (p.17) and one letter suggesting that those who want the sidewalk constructed should pay for it since the owner is on a limited income and in poor health (p.16). The applicant clarified at the hearing that he, and not the owner, is responsible for installing the sidewalk.
6. On June 22, 2005, the Planning Commission agreed with the staff recommendation and voted 8-1 to recommend **denial** (Larson dissenting).

**FACTSHEET PREPARED BY:** Jean L. Walker

**DATE:** July 5, 2005

**REVIEWED BY:** \_\_\_\_\_

**DATE:** July 5, 2005

**REFERENCE NUMBER:** FS\CC\2005\WVR.05006

## LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for JUNE 22, 2005 PLANNING COMMISSION MEETING

**PROJECT #:** Waiver #05006

**PROPOSAL:** Waive sidewalks associated with Osie Square final plat #02033

**LOCATION:** N. 64<sup>th</sup> St. and Cotner Blvd.

**LAND AREA:** 4,633 sq. ft., more or less

**CONCLUSION:** There are no unusual circumstances that would prevent the installation of the sidewalk. The installation of the sidewalk adjacent Lot 2, Osie Square would fill the gap in the sidewalk between Dudley St. and Orchard St.

<b>RECOMMENDATION:</b>	Denial
------------------------	--------

### **GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** Lot 2, Osie Square, located in the NE 1/4 of Section 21, Township 10 North, Range 7 East, Lancaster County, NE

**EXISTING ZONING:** B-1, Local Business

**EXISTING LAND USE:** Single-family house

### **SURROUNDING LAND USE AND ZONING:**

North: B-1, Local Business Commercial office  
South: B-1, Local Business Dental clinic and retail  
East: B-1, Local Business Commercial  
West: R-3, Residential Single-family residential

### **HISTORY:**

October 8, 2002 Osie Square final plat was approved by the Planning Director.

### **COMPREHENSIVE PLAN SPECIFICATIONS:**

"Interconnected networks of streets, trails, and sidewalks should be designed to encourage walking and bicycling, reduce the number and length of automobile trips, conserve energy and for the convenience of the residents." (F-18)

"Transit, pedestrian, and bicycle networks should maximize access and mobility to provide alternatives and reduce dependence upon the automobile." (F-19)

"Streets and public spaces should be safe, comfortable, and interesting to the pedestrian." (F-19)

"Sidewalks should be provided on both sides of all streets, or in alternative locations as allowed through design standards or the Community Unit Plan process." (F-66)

"Interconnected networks of streets, trails and sidewalks should be designed to encourage walking and bicycling and provide multiple connections within and between neighborhoods." (F-66)

The sidewalk system should be complete and without gaps." (F-89)

### **ANALYSIS:**

1. This is a request to waive the sidewalk on N. 64<sup>th</sup> St. associated with Osie Square final plat.
2. The 2025 Comprehensive Plan encourages walking and interconnected sidewalks.
3. The applicant's letter states that the sidewalk would be completely within a fenced in area. The fence is located within the street right-of-way and is a violation of Chapter 14.40 of the Municipal Code.
4. The applicant's letter further states that there are two large elm trees that are in the path of the sidewalk. Public Works & Utilities Department states that there is adequate space to construct the sidewalk around the trees.
5. There are sidewalks north and south of this lot. The installation of this sidewalk would complete the sidewalk system between Dudley St. and Orchard St. The attached aerial was photographed in 2002. Sidewalks have been constructed along Dudley St. and N. 64<sup>th</sup> St. since 2002 except in front of the subject lot.
6. Section 26.11.040(a) of the Land Subdivision Ordinance states, "Sidewalks along non-major streets shall be installed prior to the City issuing an occupancy permit or within four years following final plat approval, whichever occurs first." This plat was approved on October 8, 2002.. The applicant has until October 8, 2006 to install the sidewalks.
7. Section 26.31.010 of the Land Subdivision Ordinance states, "Whenever a lot, tract, or parcel of land is of such unusual size or shape or is surrounded by such development or unusual condition that the strict application of the requirements contained in these regulations would result in actual difficulties or substantial hardship or injustice, the subdivider may request a modification of such requirements. There are no difficulties or hardships that would preclude the applicant from installing the sidewalk.

Prepared by:

Tom Cajka  
Planner

**DATE:** June 7, 2005

**APPLICANT:** Steve Osenbaugh  
1221 North Cotner Blvd.  
Lincoln, NE 68508  
(402) 489-9180

**OWNER:** Kenneth Bundy  
1220 N. 64<sup>th</sup> St.  
Lincoln, NE 68505

**CONTACT:** same as applicant

## WAIVER NO. 05006

### PUBLIC HEARING BEFORE PLANNING COMMISSION:

June 22, 2005

Members present: Sunderman, Carlson, Larson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand.

Staff recommendation: Denial.

Ex Parte Communications: None.

### Proponents

1. **Steve Osenbaugh**, 3802 S. 57<sup>th</sup> Street, appeared on behalf of the applicant and owner of 1220 N. 54<sup>th</sup> Street, **Ken Bundy**. Mr. Bundy does not need the sidewalk because he is 63 and he has lived without the sidewalk all his life. Cost is not really the issue. With regard to handicap persons using their chairs to go down the street, Osenbaugh believes they will do that whether there is a sidewalk or not because it is a smoother ride. There have never been sidewalks at this location on Cotner and not having the sidewalk has not created any problems. He can think of only one house in the area that has children. It was because of Mr. Bundy that the development of this area was allowed. This was a blighted piece of property to begin with. There were motel/apartment units used by transient people and there were drug problems. Mr. Bundy allowed it to developed by selling the back half of his lot to Mr. Osenbaugh. The dental office would love to purchase Mr. Bundy's house, but he wants to stay there until he is not able to do so. If the sidewalks were constructed now, they would be ripped back out when Mr. Bundy's property is purchased by the dental office. They would put the sidewalks in at that time.

There was no testimony in opposition.

### ACTION BY PLANNING COMMISSION:

June 22, 2005

Carlson moved to deny, seconded by Carroll.

Carlson commented that the sidewalk is a requirement of the preliminary plat. This is the last piece of sidewalk that has not been put in on the block. It has a fence across it now so that is why it is not used. Public Works indicates there is sufficient right-of-way to construct the sidewalk.

Motion to deny carried 8-1: Sunderman, Carlson, Carroll, Krieser, Taylor, Pearson, Esseks and Bills-Strand voting 'yes'; Larson voting 'no'. This is a recommendation to the City Council.



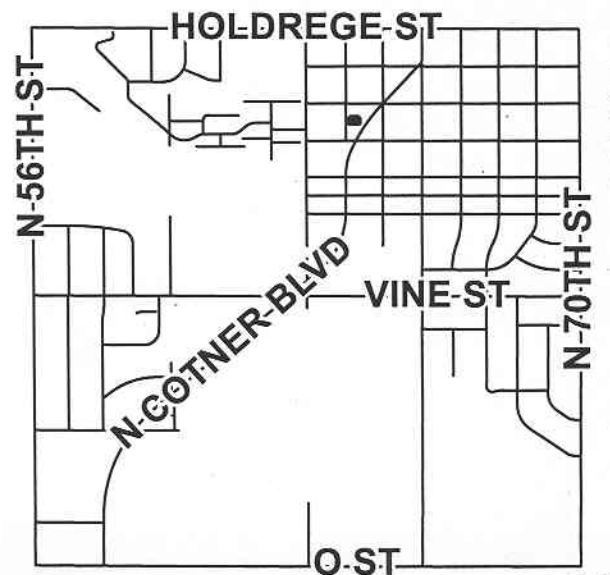
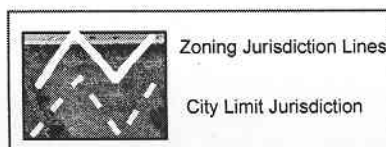
2002 aerial

## Waiver #05006 N. 64th & Cotner Blvd

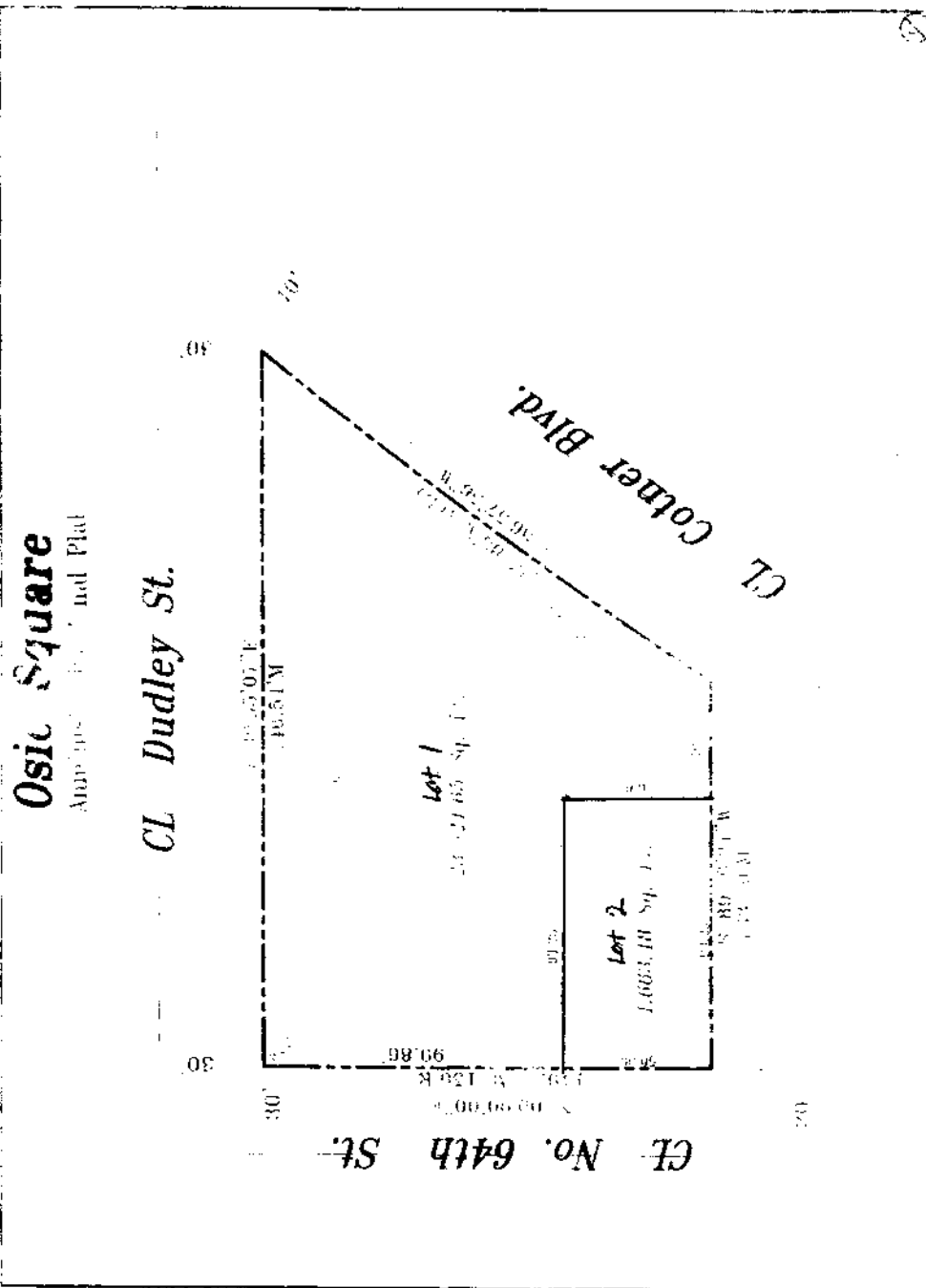
### Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile  
Sec. 21 T10N R7E



006





Harry B Kroos/Notes  
05/23/2005 04:40 PM

To Thomas J Cajka/Notes@Notes  
cc Charles W Baker/Notes@Notes  
bcc  
Subject Sidewalk Waiver Osie Square

Tom:

I looked at the property at 1220 N. 64th Street. I have included several photos of the front yard. There is a short wire fence which has been placed into the public right-of-way. This is a violation of Chapter 14.40 of the Municipal Code.

Photo 1 shows the property from the north and photo 5 shows the property from the south.



MVC-001F.JPG MVC-005F.JPG

The sidewalk alignment could be adjusted to go behind the large ash trees shown. There is 4 ft of right-of-way behind the existing sidewalk which should provide enough space to complete the sidewalk. Also there is sidewalk on the property south of the dental office and the drives and paving for the parking at the dental office has completed a walk for pedestrians with a short connection of each end.

Photo 4 shows the view from the existing sidewalk south of the Dental Office



MVC-004F.JPG

Thus completion of sidewalk across Lot 2 Osie Square would complete the sidewalk in this block.. This office recommends denial of the waiver.

Harry Kroos  
Engineering Services





MAY 23 2005

#1

609

Looking south on N. 64<sup>th</sup> St.



MAY 23 2005





011

Looking north on N. 69<sup>th</sup> St. from south of dental office

#4  
11



Dear Sir:

Re: Waiver of 50 feet of sidewalks on Lot 2 of Osie Square.

Reason: Disruption of the fenced in front yard of Kenneth Bundy.

My name is Steve Osenbaugh and I am responsible for the development of this plat called Osie Square. I bought property from Dick Evans and the back half of a lot owned by Kenneth Bundy and then had the land replatted for redevelopment.

As part of the requirements for this plat on block 78 we were obligated to insure the installation of sidewalks on the Plat. Those requirements were met except for the final 50 feet across the front yard of Kenneth Bundy. This block is zoned business and Mr. Bundy has the final residential piece of property on the block. We have erected a privacy fence for Mr. Bundy across the back of his lot (along Cotner Blvd.) and along the north border of his lot to insure his privacy.

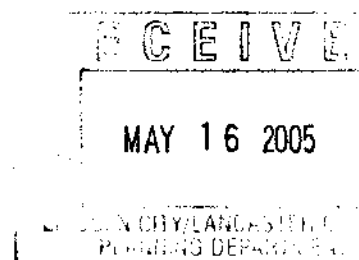
Mr. Bundy has a small front yard facing North 64th Street which is enclosed with a fence. From his front stoop to the border of the fence (running north/south parallel to 64th Street) is approximately 18 feet.. The edge of the sidewalk towards the street (western edge) would run along the border of his fence, which places the sidewalk completely within his fenced in area. To make matters worse, on both his south and north property lines are large elm trees which also sit on what would be the western edge of the sidewalk. For the sidewalk to continue on a straight path these trees would have to be removed, or alternately the side walk could take a curve in (east) and then continue on its path. If we curve the sidewalk in to avoid the trees then we are going to place the sidewalks about 6 feet into his fenced front yard leaving him approximately 12 feet. The sidewalk on the south end will butt into the parking lot of a dental clinic.

Throughout the redevelopment of this area I have maintained an excellent working relationship with Kenneth and we have tried to insure his privacy with minimal disturbance. I felt fortunate that he would sell me the back half of his property for this development and I hope sometime in the future to acquire the rest of his property to finish the development of this plat. However for now, he is an elderly gentlemen who just desires to be stay on his property which has minimal space. I really hate to infringe upon any more of his property by taking away his small fenced in front yard.

So I am asking for a waiver on this 50 feet of sidewalk to allow Mr. Bundy to keep his fenced in front yard undisturbed.

Thank you for your consideration.

Steve Osenbaugh  
the pharmacy  
1221 North Cotner  
Lincoln, NE 68505



June 6, 2005

Dear Sir:

Re: Waiver of 50 feet of sidewalks on Lot 2 of Osie Square.

My name is Steve Osenbaugh and I have made an application to waive approximately 50 feet of sidewalks at 1220 N 64<sup>th</sup> Street, which is on Kenneth Bundy's property. I am processing this waiver as the redeveloper of the plat on my behalf and Kenneth's behalf, who would not be able to handle this process on his own. Since my original filing I have had a meeting on site with Harry Kroos, from City Engineering Services, Kenneth Bundy, and myself.

At this meeting we reviewed how the sidewalk would be constructed as to avoid removing the trees, and what impact this would have on Kenneth. After discussing the possibilities and their impact, Kenneth still desires not to have a sidewalk placed in front of his house because of the impact it would have on his fenced in front yard. This is the last piece of residential property in a block that is zoned business. Myself, or the neighboring dental office, would like to purchase the property in the future, but it is Kenneth's desire to stay on the property as long as he is healthy enough.

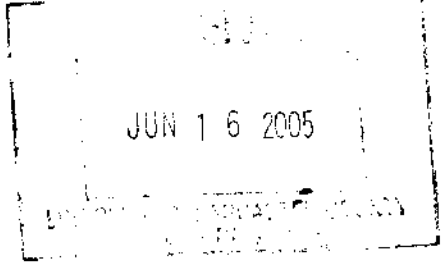
From a humanitarian stand point I believe we should leave Kenneth alone and let him remain on his property as he has for the last forty years. From an aesthetic point, I believe it would be more attractive if we had his fence removed and a sidewalk built.

From a business point of view I would like to purchase this property in the future and add to my current structure, or property. When redevelopment does take place I believe most of the proposed sidewalk will have to be torn out and replaced because of the grade on this property. Again, this is on odd piece of property with an area cut out for a driveway, but no real driveway. This driveway, (dirt/grassy path), runs east and west. This area that looks like it should be a driveway leads to a garage on the back part of the property which has its garage door facing north with no way of entering the garage with a car from the driveway area. If we place a sidewalk at grade level, this will be too low in the future when redevelopment takes place, or if we leave the sidewalk above grade to match the rest of the property it will act like a speed bump plus block the drainage off the property.

One possibility would be to postpone the sidewalk requirement until a future date, but then I would be required to leave a remaining balance in the escrow account until an unknown date in the future. **I believe the best solution would be to require new sidewalks within six months from the sale of this property.**

Thank you for your consideration.

Steve Osenbaugh  
the pharmacy  
1221 North Cotner  
Lincoln, NE 68505



SUPPORT

ITEM NO. 3.3: WAIVER NO. 05006  
(p.119 - Consent Agenda - 6/22/05)

Lincoln, NE  
June 14, 2005

Dear Planning Commission Members:

We have received the information related to Sidewalk Waiver No.05006 at N. 64th and Cotner Blvd. We support the waiver.

The property is owned by the Bundy family, I believe, and there is not a sidewalk there now, nor has there ever been one. To require it now would be the result of an error on someone's part in earlier plotting and planning. About a third of the frontage consists of curb-cut for the little-used and unimproved driveway.

To extend existing sidewalk from the north would require removal of big trees which are on city street property, adjusting the elevation accordingly or jogging around to clear them -- not a good plan!

The fenced and maintained front yard of the Bundy property would be affected negatively, as the fence would have to be removed and replaced to preserve the peaceful, long-established yard.

Anyone who knows the Bundy family also knows they have tolerated the unlawful parking and business traffic in front of their home -- now to require construction of a sidewalk is encroaching on the otherwise peaceful family existence there.

No further sidewalks are needed or desired in the area until ownership changes or use of the property changes.

Flowering shrubbery was especially beautiful this spring and would be eliminated by sidewalk placement there. The Bundy family feed birds regularly in their yard. Don't take the trees -- don't take the birds -- please allow the waiver!!

If the city would like to do some improvement in this area, broken and sunken curbs need to be replaced, vegetation controlled in paving cracks and bent street signs straightened. Utility services need to repair gas leaks which kill the turf on city property adjoining this street.

Sincerely,

*Bruce E. McBride*

*Betty McBride*

Bruce and Betty McBride  
6345 Dudley Street  
Lincoln, NE 68505

Sirs -

In reply to Waiver #

05006

N 64<sup>th</sup> St & Cotner Blvd -

Mr Kenneth Bundy  
is a, poor in health,  
War Veteran on a low  
budget.

Maybe the people who  
want side walk in  
front of his residence  
could help pay for it -

Thank You

Paul M. Vitale

6330 Graham St

Lincoln  
Nebr





Fern Ewert  
<re02815@alltel.net>  
06/20/2005 10:38 AM

To plan@lincoln.ne.gov  
cc  
bcc

Subject Sidewalk variance/ Waiver # 05006

We are opposed to the variance. We live at 1301 N 64th, on the NW corner of 64th & Dudley. From Dudley to Orchard there is no sidewalk on the west side of 64th. On the east side there is a sidewalk north of the area of application, and a sidewalk again south of the area, to Orchard. To walk from our corner to the Kwick-Shop on Cotner, children are walking on the street. Handicapped people in motorized wheel chairs are going down the middle of the street. The street is empty of parked cars on the weekends, but during the week usually cars are parked on both sides. In the winter, with snow on the road and no cleared sidewalk, it is hazardous to walk on 64th. We need that sidewalk. Ralph & Fern Ewert.